

REMARKS

Claim Rejections – 35 U.S.C. § 103 Over Balasayee In View Of Geye

Claims 1-20 stand rejected under 35 U.S.C § 103(a) as being unpatentable over Balasayee, *et al.*, (*Workload Management: SP and Other RS/6000 Servers, March 2000, International Technical Support Organization, IBM Corporation, First Edition*) in view of Geye, *et al.*, (US Pub. No. 2005/0108713). The question of whether Applicants' claims are obvious or not is examined in light of: (1) the scope and content of the prior art; (2) the differences between the claimed invention and the prior art; (3) the level of ordinary skill in the art; and (4) any relevant secondary considerations, including commercial success, long felt but unsolved needs, and failure of others. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1729-1730, 82 USPQ 1385 (2007). Although Applicants recognize that such an inquiry is an expansive and flexible one, the Office Action must nevertheless demonstrate a prima facie case of obviousness to reject Applicants claims under for obviousness under 35 U.S.C. § 103(a). *In re Khan*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). To establish a prima facie case of obviousness, the proposed combination of Balasayee and Geye must teach or suggest all of Applicants' claim limitations. MPEP 2142 (citing *In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974)). As shown below in more detail, the proposed combination of Balasayee and Geye cannot establish a prima facie case of obviousness because the proposed combination does not teach each and every element of the claims of the present application. As such, Applicants respectfully traverse each rejection individually.

The Proposed Combination of Balasayee and Geye Does Not Teach Or Suggest Each And Every Element Of Claim 1 Of The Present Application

Independent claim 1 of the present application recites:

1. A method for assigning computational processes in a computer system to workload management classes, the method comprising:

installing on the computer system an executable file from a software installation package, wherein the software installation package includes a specification of workload management properties for the executable file, including a definition of a workload management class;

executing a process in dependence upon the executable file; and

assigning the process to the workload management class.

As shown below in more detail, the combination of Balasayee and Geye cannot be used to establish a prima facie case of obviousness against the claims of the present application because the combination of Balasayee and Geye does not teach or suggest each and every element of claim 1 of the present application.

Geye Neither Discloses Nor Suggests Installing On A Computer System An Executable File From A Software Installation Package, Wherein The Software Installation Package Includes A Specification Of Workload Management Properties For The Executable File, Including The Definition Of A Workload Management Class

The Office Action at page 3 admits that Balasayee “does not explicitly disclose installing on the computer system an executable file from a software installation package, wherein the software installation package includes a specification of workload management properties for the executable file, including a definition of a workload management class.” That is, Balasayee does not disclose the first element of claim 1 of the present application. The Office Action attempts to cure this deficiency with Geye. However, as described below, Geye does not disclose the first limitation of claim 1 for the same reasons that Balasayee does not.

The Office Action takes the position that Geye at Abstract, paragraph 0028, and paragraph 0034 discloses the first limitation of claim 1. Applicants respectfully note in response, however, that what Geye in its Abstract in fact discloses is:

A dynamic workload management system enables system administrators to easily identify installed applications and to assign them to affinity groupings in order of importance to the enterprise and to enable the system administrators to save and restore multiple configurations. The workload configuration is continually updated based on the hardware utilization measurements of the application groups that make up a workload configuration. The software interface of the system of the invention permits the system to dynamically add and remove processors to and from affinity masks that are automatically set up. This feature of the invention allows the application groups to consume CPU resources according to their priority.

That is, Geye in its Abstract discloses system administrators identifying previously installed applications and assigning them to affinity groups. Applicants additionally note in response that what Geye at paragraph 0028 in fact discloses is:

[0028] An application group as used herein is a set of applications, as well as a number of associated threads, programs, etc. that are used by a single "application." In other words, the application group may comprise more than the single application executable that a user typically considers to be the application. Rather, an application may also require affiliated processes that are needed to carry out the task of the primary application. Hence, an application group may comprise a single executable application or some set of executables that should be treated in a like manner for priority, CPU affinity, and so on.

That is, Geye at paragraph 0028 discloses that Geye's application group may comprise a single executable application or some set of executables that should be treated in a like manner. Applicants additionally note in response that what Geye at paragraph 0034 in fact discloses is:

[0034] FIG. 3 provides a high level diagram illustrating the primary steps in the system. Initially, the application groups are set up (step 32). This can be done automatically, as described more fully below, or manually by allowing a user to associate various executables, processes, threads, programs, etc. in a common application group. Next each application

group is assigned to processors to generate an affinity mask of all of the processors that the application group can execute on (step 34). Finally, the affinity mask is dynamically adjusted during system operation as a function of CPU utilization (step 36).

That is, Geye at paragraph 0034 discloses that once Geye's application groups are initially set up, they are assigned to processors to generate an affinity mask. Geye at the cited reference points cannot disclose the first limitation of claim 1 in the present application because Geye at the cited reference points does not disclose a software installation package that includes a specification of workload management properties, including the definition of a workload management class. Geye's application groups, which the Office Action attempts to equate with workload management classes as presently claimed, are either defined *manually by system administrators*, or by processing the registry keys for *previously installed applications*. See, Geye at Abstract, paragraph 0028, paragraph 0038-0041. Geye, at the cited reference points or anywhere else in Geye, does not teach that workload management properties, which include the definition of a workload management class, are part of *a software installation package*. Geye therefore neither discloses nor suggests the first limitation of claim 1 in the present application. The Office Action therefore cannot establish a prima facie case of obviousness. The rejections under 35 U.S.C. § 103 should be withdrawn, and the claims should be allowed.

**The Office Action Does Not Examine
The Claims In Light Of The Factual
Inquiries Set Forth In *Graham***

In addition to the fact that the Office Action has not established a prima facie case of obviousness, there is at least another reason that the rejections under 35 U.S.C. § 103 should be withdrawn. The Office Action does not examine Applicants' claims in light of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). As mentioned above, the question of whether Applicants' claims are obvious *vel non* is examined in light of: (1) the scope and content of the prior art; (2) the differences between the claimed invention and the prior art; (3) the level of ordinary skill in the art; and (4) any relevant secondary considerations, including commercial success, long felt

but unsolved needs, and failure of others. *KSR Int'l Co. v. Teleflex Inc.*, No. 04-1350, slip op. at 2 (U.S. April 30, 2007); *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). “To facilitate review, this analysis should be made explicit.” *KSR*, slip op. at 14 (citing *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)). That is, the Office Action must make explicit an analysis of the factual inquiries set forth in *Graham*. In present case, however, the Office Action does not even mention the factual inquiries set forth in *Graham*. As such, the rejections under 35 U.S.C. § 103 are improper and should be withdrawn.

Relations Among Claims

Independent claims 9 and 15 are system and computer program product claims, respectively, for assigning computational processes in a computer system to workload management classes corresponding to independent method claim 1 that include “means for” and “means, recorded on [a] recording medium, for” assigning computational processes in a computer system to workload management classes. Claim 1 is allowable for the reasons set forth above. Claims 9 and 15 are allowable for the same reasons that claim 1 is allowable. The rejections of claims 9 and 15 therefore should be withdrawn, and claims 9 and 15 should be allowed.

Claims 2-8, 10-14, and 16-20 depend respectively from independent claims 1, 9, and 15. Each dependent claim includes all of the limitations of the independent claim from which it depends. Because the combination of Balasayee and Geye does not teach or suggest each and every element of independent claims 1, 9, and 15, the combination of Balasayee and Geye also does not teach or suggest each and every element of the dependent claims of the present application. As such, claims 2-8, 10-14, and 16-20 are also patentable and should be allowed.

Conclusion

Claims 1-20 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Balasayee and Geye. For the reasons set forth above, the combination of Balasayee does not teach or suggest each and every element of Applicants' claims. Claims 1-20 are therefore patentable and should be allowed. Applicants respectfully request reconsideration of claims 1-20.

The Commissioner is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

Date: October 8, 2008

By: _____

Respectfully submitted,



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